

Bryan Ferrand, William Watkinson, } Appellants.  
and John Watkinson,

Richard Jackson, Administrator } Respondent.  
of Barbara his late Wife,

## The RESPONDENT'S CASE:

Thomas Ferrand's  
Will, Dated 25 Febr.  
1682.

Bill Filed, 27 July.  
1697.

First Decree, 29 Jan.  
1699.

Second Decree, 17  
May 1701.

26 August 1701.

Bill of Review,  
4 April 1702.

21 Jan. 1702.

30 June 1703. Bill  
of Review Dismiss'd as  
to the New Matter.

27 October 1703.  
Order on Arguing the  
Errors.

**T**HAT Thomas Ferrand having only Two Children, the Appellant Bryan Ferrand, and Barbara, the Respondent's late Wife; and being Seized in Fee of the Mannor and Lands, called *Flasby-Hall* in *Com. Ebor.* of the clear Yearly Value of Eighty Pounds per Ann. and a Personal Estate of 283 l. 16 s. 4 d. By his Will Dated 25th Febr. 1682; Directs that his said Children should be Maintained out of his Goods, and the Rents and Profits of his Lands, till 21; and the Overplus to be for the raising a Portion of Five Hundred Pounds for his said Daughter, to be paid to her at the Age of 21: And in case it were not then Raised, that his Executor should stand Seized of all his Lands till the same was fully Raised and Paid. And of his said Will, made the Appellant William Watkinson Executor.

That the Respondent having Married the said Barbara at the Age of 18, had Issue by her one Daughter named Barbara, who is still Living. And after the Decease of the said Barbara his Wife, the Respondent having taken out Administration to her, and being thereby Entitled to the said Five Hundred Pounds Portion, with Interest and Maintenance, filed his Bill against the Appellants in the Court of Chancery, 27th July, 1697; and thereby prayed an Account of the Personal Estate, and of the Rents and Profits of the Real Estate, and that the 500 l. Portion, with Interest and Maintenance, might be Raised and Paid him; and that the Premises charged therewith might be Sold for that Purpose.

That after the Appellants had Answered, and Witnesses Examined, the Cause came to be Heard before the late Lord Chancellor Sommers: An Account was directed to be taken of the Personal, and of the Rents and Profits of the Real Estate, and to see what Incumbrances there were on the Premises: And after the Master's Report, Further Direction was to be given concerning the Payment of the said Portion, Interest and Maintenance.

The Cause was finally Heard by the Master of the Rolls (in the Absence of the Lord Keeper) 17 May, 1701; and it appearing by the Report made in pursuance of the former Decree, That the 500 l. Portion could not be Raised in any Reasonable time, out of the Rents and Profits of the Real Estate, (in regard there were Two Mortgages, one of 200 l. due to one Lupton, and the other of 500 l. Assigned to the Appellant William Watkinson, and an Annuity of 25 l. Payable to the Testator, Thomas Ferrand's Widow for Life, Charged on the said Premises,) It was then Decreed, That the said Real Estate should be Sold forthwith, for the Raising the said 500 l. and that the Appellants should Joyn in such Sale; and that the 500 l. should be Invested in Lands, and the Profits thereof to be Enjoyed by the Respondent for his Life, and afterwards by his said Daughter Barbara, who is still Living. And the Respondent was to have 10 l. per Ann. for the Maintenance of his Wife from their Inter-marriage, till her Death, and from the time she would have Attained her Age of 21 Years (if she had Lived) till the said 500 l. should be Raised and Paid, towards Interest of the said 500 l. to be Paid out of the Trust Estate Decreed to be Sold: And it was further Decreed, That in Case the Appellants did not Comply with the said Decree, but should give the Respondent further Trouble, then the Appellants were to Pay the Respondent full Interest of the said 500 l. from the time his said Wife would have Attained her Age of 21; and full Costs of Suit, to be taxed by a Master of the Court.

That the Appellant Bryan Ferrand, instead of Acquiescing in the said Decree, Petitioned the Lord Keeper the 26th of Aug. 1701, That he might have liberty to put in a new Answer to the Respondent's Bill, upon Pretence that he had found some old Deed whereby part of the Premises (of about 30 l. per Ann.) were Entailed; and therefore the Devise of Thomas Ferrand, as to so much, was Void; But upon hearing Council on Both Sides, it appearing to be a frivolous Pretence to delay the Execution of the said Decree; the Lord Keeper dismissed the Petition, and the Respondent Signed and Enrolled the said Decrees.

That the Appellants for further Vexation, Filed their Bill of Review, to Reverse the said Decree; and Assigned for new Matter, the pretended Deed of Entail; and for Error in the Body of the said Decree, that there was no care taken for the Payment of the Two Mortgages to the Appellant William Watkinson, and Lupton (who was no Party to the Suit;) and that in those Points the Decree ought to be Rectified. To which Bill the Respondent put in an Answer and Demurrer.

The Demurrer was on Arguing over-ruled; but the Court ordered the Appellants to pay the Respondent the usual Costs of allowing a Demurrer, in regard the Affidavit of the new Matter charged by the Bill was not full; and ordered the Appellants to Reply, and the Respondent to Rejoyn; whereby they might be at liberty to prove the said pretended Deed; and the Cause to be heard in *Easter-Term* next following.

The Cause upon the New Matter, and the Errors Assigned, coming to be heard before the Lord Keeper, 30 June 1703. his Lordship after mature Deliberation, and hearing Council on both Sides, and the Proofs touching the Deed of Entail, which were Defective and Loose; Dismissed the Bill of Review, with Costs to be taxed, but without Prejudice to the other Errors Assigned, in case the Appellants should think fit to bring the same on to be Argued.

That the Cause coming to be heard 27 Octob. last before the Lord Keeper, upon the Errors Assigned; after Reading the whole Proceedings, and Hearing Council on Both Sides, His Lordship declared that the Matters Assigned for Error were such as would have been Provided for by the Decree in the Original Cause, in case the Appellants had Asked the same, as they ought to have done; And that their omitting so to do was with a Design to Ensnare and Delay the Respondent: And therefore Decreed the Estate to be forthwith Sold, and the 500 l. with Interest and Maintenance to be Paid to the Respondent, as by the former Decree is directed; but Ordered that the Money due to the Appellant Watkinson upon his Mortgage, should be paid in the first place out of the Moneys arising by Sale; and the Premises to be likewise Subject to Lupton's Mortgage, and to an Annuity payable to Thomas Ferrand's Widow (if living.) And in regard the Appellants had not complied with the former Decree, but had put the Respondent to a great Expence, and been Vexatious in their Proceedings, It was further decreed, That the Appellants should pay the Respondent Interest after the Rate of 5 l. per Cent. per Annum for the 500 l. together with full Costs of Suit, to be Taxed according to the Direction of the former Decree.

Which Decree and other Proceedings, the Respondent humbly conceives, are Regular and Equitable, and founded on the Rules of Natural Justice, and the constant Practice of the Court of Chancery in the like Cases.

It cannot be pretended that any Hardship is put on the Appellants, by the Decree directing the Lands to be Sold, and the 500 l. to be raised by such Sale; because it is the constant Justice of the Court so to Decree: Otherwise the Provision made by the Father for his Child, would be Fruitless and Ineffectual, it being impossible to be raised in any other Manner. Neither is it Extraordinary, but the Settled Rules of the Court, to give Interest and Costs for a Portion, especially when the same is charged on Lands, as it is in this Case by the Words of the Will. However, the Court was pleased so far to dispence with that Rule in Favour of the Appellant Bryan Ferrand, as to Decree only Ten Pounds per Annum to the Respondent in Lieu of Interest, and to give only Moderate Costs; of which he might have had the Benefit, in case he had performed the Condition, in acquiescing in the said Decree.

As to the pretended Errors Assigned by the Petition of Appeal, in Relation to the Affidavit annexed to the Bill of Review, and the Deed of Entail thereby Set up, and now Insisted on, the Respondent humbly hopes the same will appear to be founded on Mistakes: For neither was the pretended Deed fully Proved, nor such Reasonable Account given thereof at the Hearing, as was Sufficient for a Court of Justice to found any Judgment or Decree upon, in Prejudice of an Apparent Right. Nor was the Affidavit to Support the New Matter in the Bill of Review, sufficient to Satisfy the Conscience of the Court, but very Loose and Uncertain; it appearing plainly that this Deed had been all-along in the Custody of the Appellants ever since the Testator's Death; and it was their own Fault (if any such Deed there were) that the same was not sooner produced: Which ought not to turn to the Respondent's Prejudice.

The Appellant Bryan Ferrand, had attained his full Age, above Nine Months before the first Decree pronounced before the late Lord Chancellor Sommers, the 29th of January 1699.

It plainly appears by the Appellant William Watkinson's Joyning in this Appeal, (whereby the Pretended Deed of Entail is endeavoured to be Set up, which will affect his Mortgage) That the Whole is a Trick and a Juggle to Defeat the Respondent of a just Demand: For otherwise it is impossible to imagine, that any Incumbrancer would Do, or Joyn in any Act to Support or Countenance any Deed or Prior Title, which must in the Consequence Defeat or Lessen his own Security.

*It is therefore Humbly hoped, no Countenance will be given to the Appellants in their Vexatious Proceedings; but that after the Respondent hath been almost Ruined by a very Expensive Contest of Seven Years in Chancery, in a plain Demand for himself and his Infant-Daughter, (in which the Appellants have made use of all the Delays that the Forms of the Court will allow; and have always had the Judgment of the Court against them) he shall have the Fruit and Benefit of the Several Orders and Decrees Obtained by him; and that the same shall be Affirmed with good Costs.*

Edwin Wiat.  
J. Browne.